they exclude all but their affiliates from the best bulk rates.[120] The lowest discount rate offered is for activating over 20,000 cellular numbers, and only the carrier's own retail affiliates meet this requirement.[121]

53. Second, petitioners state that the record in the Connecticut proceeding (Docket No. 94-03-27) indicates that the retail affiliates currently offer rate plans for end users that are priced below the best rate at which the Resellers can purchase bulk service, given the volume discount structure.[122] CTCS contends that the wholesale carriers' pricing strategy is determined on a consolidated revenue method such that an effective rate is determined based on the overall economic effect of retail and wholesale rates offered in the market.[123] Consequently, the wholesale entity is pricing against the independent buyers. CTCS states that what the carriers ''sparingly'' give in wholesale rate reductions, they take away at retail by below-wholesale pricing, because the per-subscriber cost for the independent Resellers would increase if they offered service at below-wholesale cost.[124] In addition, the Resellers' overall margin would be reduced.[125]

54. The carriers contend that the discounts are contained in the wholesale carriers' tariffs which the DPUC approved.[126] Moreover, they attribute the fact that only retail affiliates currently receive the greatest discounts to the affiliates' better marketing strategies.[127] Bell Atlantic also contends that the allegations of ''upside-down pricing'' by the affiliated resellers were not accepted by the DPUC.[128] The Office of Consumer Counsel and the State Attorney General reply that the carriers' tariffs were approved under different

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[120] *See, e.g.*, DPUC Petition at 3, AG Comments at 3-4, OCC Comments at 9, OCC Reply Comments at 14-15, CTCS and CM Comments at 5-6, CTCS and CM Reply Comments at 26.

[121] *See* DPUC Petition at Appendix F (contains Bell Atlantic Metro Mobile's Rate Schedule at 3; Springwich Cellular Limited Partnership's Effective Rate Schedule at 1). BAMM's and Springwich's next lowest bulk rate is for 10,001-20,000 numbers; the corresponding BAMM rate discount is 0.5 percent less at this rate level and the Springwich rate is $1.00 less per month.

[122] DPUC Petition at 3.

[123] CTCS and CM Reply Comments at 25.

[124] CTCS and CM Reply Comments at 26.

[125] *Id.*

[126] *See* BAMM Comments at 22-24.

[127] *See* Springwich Comments at 31-32, 34.

[128] BAMM Comments at Appendix A24.

circumstances, and that the DPUC has the power and the responsibility to adjust its regulatory supervision to meet changing circumstances.[129]

b. Sharing Confidential Marketing Information

55. The DPUC, Attorney General, and Office of Consumer Counsel also allege that the wholesale carriers require independent resellers to divulge confidential information including their retail rates and competitive pricing strategies, which the wholesale carriers then share with their retail affiliates.[130] The state contends employees of SNET Cellular (Springwich's retail affiliate) have met with cellular service resellers to discuss retail rates and the impact independent resellers' rates would have on the Springwich retail affiliate.[131] Evidence also was offered that after Escotel, a reseller, discussed its marketing strategies with SNET Cellular employees, employees with access to such information were transferred to Springwich's affiliated retail operations.[132]

56. The wholesale carriers assert that such information is not required, and when it is volunteered, it is protected. Springwich adds that where there is any overlap in management responsibilities between Springwich and SNET Cellular, the companies have taken steps to ensure that wholesale and retail information is closely guarded and not shared.[133]

c. Relationship Between Wholesale Carriers and Their Retail Affiliates

57. Connecticut alleges that the close relationship between the wholesale providers and their retail affiliates puts the independent resellers at a distinct disadvantage. The DPUC considers the wholesale carriers' relationships with their retail affiliates to be anticompetitive, and asserts that this anticompetitive "atmosphere" requires continued DPUC oversight.[134] The DPUC also suggests that Springwich's retail affiliate has received an unfair competitive advantage because it has the most prominent advertising in every SNET Company Yellow Pages directory section.[135] Connecticut also alleges that this integral relationship has resulted in the ability of Springwich's retail affiliate to activate cellular

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[129] *See* OCC Reply Comments at 14-15; AG Reply Comments at 16.

[130] DPUC Petition at 3.

[131] *Connecticut Decision* at 23.

[132] *Id.*

[133] Springwich Comments at 38.

[134] *Connecticut Decision* at 26-27.

[135] OCC Reply Comments at 14.

numbers at times when other resellers were unable to do so, such as weekends and holidays.[136]

58. The carriers respond that their corporate structure is entirely consistent with the requirements of the FCC and state regulation.[137] Further, the carriers argue that the absence of corporate and managerial separation between wholesale and retail operations of the cellular carriers is not per se anti-competitive or discriminatory practice.[138] Springwich adds that, although it is not required to, it maintains strict cost separation between these operations to ensure the accurate allocation of costs.[139] Springwich also points out that the DPUC has not formally regulated wholesale carriers' corporate structures and has recognized such structures without requiring changes to them. In addition, both Springwich and BAMM acknowledge that, on one occasion over the past ten years, they each provided information concerning a new wholesale plan to their retail affiliate before notifying other resellers. Both carriers state that these were isolated instances, which were promptly corrected.[140]

d. Equal Access and Billing

59. Connecticut contends that Springwich's requirement that long distance calls be carried by its long distance affiliate is anti-competitive and "contradicts" the policy of the Connecticut General Assembly to promote telecommunications competition.[141] Springwich counters by arguing that: (1) providing equal access to long distance carriers for interstate calls outside the Springwich cellular network does not justify continued state rate regulation; (2) this practice is common among non-BOC cellular carriers; and, (3) since Connecticut is a single LATA state, equal access is, by definition, solely an interstate issue.[142] BAMM is required to provide equal access under the Modification of Final Judgment.[143]

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[136] *Id.*

[137] Springwich Reply Comments at 37-38.

[138] *Id.* at 17.

[139] Springwich Comments at 37.

[140] *Id.* at 38; BAMM Opposition at 20.

[141] *See* DPUC Petition at 3; OCC Comments at 8-9; AG Comments at 4, *citing* Public Act 94-83, *An Act Implementing the Recommendations of the Telecommunications Task Force.*

[142] Springwich Comments at 35.

[143] United States v. AT&T, 552 F.Supp. 131, (D.D.C. 1982) *aff'd sub. nom.* Maryland v. United States, 460 U.S. 1001 (1983).

60. Connecticut also disapproves of wholesale carriers' rounding practice in billing their airtime charges. Springwich bills on a per-minute basis and BAMM bills on a thirty-second basis; however, both companies apparently have the technical capability to bill at one-tenth second intervals.

2. Rate of Return, Price Levels, Market Share

61. Connecticut alleges that the cellular carriers have been earning what appear to be excessive rates of return for 1988-93.[144] The DPUC also recites OCC's assertion that wholesale cellular carriers' profit levels are evidence of the lack of effective competition.[145] OCC and the resellers contend that 15 percent is a reasonable rate of return for wholesale carriers.[146] The wholesale carriers suggest that a rate of return of 20.7 percent is reasonable.

62. The Attorney General states that BAMM and Springwich admitted on cross-examination before the DPUC that, with competition, rates could be 25 percent to 35 percent lower.[147] According to the Resellers, proper interpretation of the cellular carriers' financial information indicates excessive wholesale prices, which is consistent with the anticipated 25 percent rate reduction that will occur following new competitors' market entry.[148] The wholesale carriers maintain they are earning competitive rates of return.[149]

63. The Attorney General states that application of the HHI (Herfindahl-Hirschman Index) test indicates the "obvious" fact that the cellular carriers are duopolists.[150] The Attorney General argues that declining wholesale cellular rates do not prove competition

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[144] *See Connecticut Decision* at 9-11.

[145] *Id.* at 10.

[146] *Id.*

[147] *Connecticut Decision* at 9.

[148] *Id.* at 9.

[149] *See* Springwich Comments at 28-30; BAMM Comments at 13.

[150] AG Reply Comments at 10. The HHI is a means of measuring market concentration. It is calculated by squaring the market share of each market participant and then adding the squares. In antitrust analysis this calculation is made for both pre-merger and post-merger markets, with the difference representing the increase in market concentration that will result from the merger. The higher the pre-merger number, and the greater the increase to that number resulting from a merger, the more likely the merger may violate the antitrust laws. *See, e.g.*, FTC v. PPG Industries, Inc., 798 F.2d 1500, 1503 (D.C. Cir. 1986); F. Scherer & D. Ross, INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE (3rd ed. 1990) at 72.

in Connecticut, and alleges that the two major reductions in the past seven years occurred only because the carriers were petitioning for deregulation at those times.[151] The Attorney General also contends that once DPUC oversight is removed, there will be nothing to prevent BAMM and Springwich from raising their prices.[152]

64. Springwich (SNET) and BAMM (Bell Atlantic) provide wholesale cellular service in four MSAs, and Litchfield and Springwich provide wholesale service in one RSA. Springwich has 15 resale subscribers, BAMM has 11 resale subscribers, and Litchfield has none.[153] As of the end of 1993, BAMM and Springwich possessed 54 percent and 46 percent shares of the bulk wholesale cellular market, respectively.[154] The non-wireline carrier, BAMM, has been able to erode the wireline carrier's 100 percent market share to 46 percent in nine years.

65. Springwich and BAMM contend that the characteristics of the cellular marketplace in Connecticut, including the measure of market concentration produced by the HHI test, are a product of the duopoly structure adopted by the Commission for cellular services.[155] Springwich argues "the fact that such measures indicate that a two-carrier market is highly concentrated simply proves the obvious-- they do not, however, demonstrate that the concentrated market is not functioning in a competitive fashion."[156] Springwich states that competition in the wholesale cellular market intensified in 1992 when BAMM purchased the Band A non-wireline carrier in Connecticut.[157] Since BAMM now serves the larger share of the wholesale market, Springwich argues that this is incontrovertible evidence that vigorous competition exists.[158] Springwich states that since the introduction of cellular service, the carriers have regularly lowered wholesale rates, introduced service and rate promotions, and

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[151] AG Reply Comments at 11-12 ("BAMM's first such wholesale price change occurred in August, 1993, at the time hearings were scheduled in Docket No. 93-08-03; BAMM's second reduction in monthly access charges was announced during the course of the hearings held before the DPUC. Springwich responded by lowering prices also.").

[152] *Id.*

[153] DPUC Petition at 2.

[154] BAMM Comments at 12.

[155] *See* Springwich Comments at 19; BAMM Comments at 16-17.

[156] Springwich Comments at 20.

[157] Springwich Comments at 2-3.

[158] Springwich Comments at 3.

introduced other new improvements.[159] Springwich asserts that between 1990 and 1994, its monthly wholesale rates for cellular numbers decreased more than 11 percent before adjustment for inflation.[160] Springwich also asserts that rates for usage have declined significantly.[161] Springwich adds that these price reductions have come at the same time that network investment has increased and the carriers have incurred the significant cost of converting their networks to digital technology.[162] Over the past five years, the growth percentage in cellular subscribers in Connecticut has averaged in the double digits. Springwich's year-end estimates for 1993 indicate 86,052 active cellular numbers, and BAMM reported 101,138 active cellular numbers for the same period.[163]

66. The DPUC counters the carriers' arguments by asserting that the wholesale cellular market is closed to entry, that the service offered therein is homogenous, and that neither carrier can alter significantly the quality or characteristics of the service it provides, relative to its competitor.[164] Since part of the homogeneity is that of costs, the DPUC claims, this makes for implicit price collusion because each carrier knows the other carrier has the same general cost profile.[165]

C. Discussion

1. Introduction

67. In order to continue regulation of intrastate cellular rates, Connecticut must prove that "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory."[166] Connecticut has not satisfied the statutory requirement.

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[159] *See* Springwich Comments at 3 and Springwich Reply Comments at 8.

[160] Springwich Comments at 16 and Ex.7, Springwich states that "last month, (*i.e.*, August 12, 1994), in response to a rate reduction by BAMM and the changing market conditions, Springwich announced an additional 35 percent decrease in monthly wholesale rates for cellular numbers." *Id.*

[161] "Before adjustment for inflation, Springwich's per minute rates for peak usage have decreased more than 15 percent and per minute rates for off-peak usage have declined roughly 25 percent since 1990." *Id. See also* Springwich's Exhibit 7, filed with Comments.

[162] Springwich Comments at 16.

[163] Springwich Comments at 13.

[164] DPUC Reply Comments at Appendix A, Testimony of Mr. King, pp. 785-797.

[165] *Id.*

[166] *See* 47 U.S.C. § 332(c)(3)(A).

68. Our decision is based in part on the fact that the DPUC, upon completion of its own investigation of cellular market conditions less than one year ago, did not conclude that market conditions fail to protect consumers. While the DPUC found that "the record...is inconclusive relative to the cellular carriers' rate of return and their financial performance since 1987[,]" it did not find that these data demonstrated unjust or unreasonable, or unjustly or unreasonably discriminatory rates.[167] The DPUC's findings concerning overall pricing behavior also were inconclusive.[168] Moreover, the record does not indicate that the state has initiated any subsequent proceeding directed specifically at reductions or structural changes in carrier rates. Although its investigation revealed sufficient evidence of cellular market imperfections to cause the DPUC concern, and it has decided to continue monitoring market activities,[169] the investigation apparently did not yield sufficient evidence to support a finding -- *by the DPUC itself* -- that market conditions fail to protect consumers. No additional information has been filed in the record of this proceeding that would cause us to question the DPUC's own judgment in this regard.

69. There are other bases for our decision. First, unrebutted evidence shows that cellular rates in Connecticut are declining. Second, the DPUC Petition does not address the direct and fundamental changes to the duopoly cellular market structure that are being realized by PCS and other services, such as wide area SMR. Third, Connecticut presents no evidence of systematically collusive or other anticompetitive practices concerning the provision of any CMRS. Fourth, Connecticut does not present evidence showing widespread consumer dissatisfaction with CMRS providers in that state, or discuss what specific rate regulations are needed to address whatever level of dissatisfaction may exist. Fifth, Connecticut fails to present any analysis regarding the critical issue of investment by cellular licensees (or by any other CMRS providers).[170]

70. Another weakness of the DPUC's Petition is that it views any evidence of market imperfection as proof of a need for continued rate regulation, while all countervailing evidence is attributed to its regulatory oversight. Even assuming such an argument is reasonable in theory, the DPUC has not established its factual predicate. The DPUC does not appear to have prescribed any particular pricing or rate development formula, and with minor exceptions, all currently effective and previously effective cellular rates in Connecticut appear to have been carrier-initiated. On this record, we are not persuaded by the DPUC's implicit argument that, absent continuation of its rate regulation authority, even for a limited

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[167] *See Connecticut Decision* at 30.

[168] *See* paras. 39-41, *supra.*

[169] *See Connecticut Decision* at 32.

[170] An important indicator of market failure, in our view, would be evidence that cellular firms are withholding investment in facilities as a means of restricting output and thus boosting price. *See* para. 25, *supra.* No such demonstration exists on this record.

period of time, cellular rates will quickly fall outside the zone of reasonableness. Thus, we conclude that the DPUC's demonstration is unpersuasive when viewed as a whole. As discussed below, none of the specific allegations presented by the DPUC cause us to alter this conclusion.

2. Anti-Competitive and Discriminatory Practices

a. Bulk Volume Discounts and Upside-Down Pricing

71. As noted previously, Connecticut asserts that the facility-based carriers' tariffed rates unreasonably favor their retail affiliates because only those affiliates qualify for the largest bulk discounts. We believe it is of decisional significance that these rates were subject to DPUC review before they took effect, and that they have been reviewed since then by the DPUC without any action by that agency to modify them. Moreover, there is no suggestion in this record that facility-based cellular carriers are charging different rates for the same service, based on a customer's identity. Nor has Connecticut shown that the volume discounts lack an adequate economic justification. Under these circumstances, the DPUC's evidence on this point is unpersuasive.

b. Sharing of Confidential Marketing Information

72. Connecticut asserts that Springwich requires independent resellers who compete with its retail arm to divulge competitively sensitive marketing and/or planning information, as a condition of receiving wholesale service, and offers two examples of this alleged practice.[171] Connecticut states that it believes that these examples "[require] further review and regulation by the [DPUC]."[172] Springwich contends that such information is not required of independent resellers, and when it is volunteered it is protected.[173] Springwich also contends that where management responsibilities for Springwich and SNET Cellular overlap, the companies have taken steps to ensure that wholesale and retail information is not shared. Connecticut has not rebutted Springwich's assertions. Thus, Connecticut has not established a sufficient factual basis to accord significant weight to its concerns about carriers' marketing practices.

c. Integral Relationship Between the Wholesale Carriers and Their Retail Affiliates

73. Connecticut also asserts that the close relationship between the wholesale providers and their retail affiliates puts the independent resellers at a distinct disadvantage.

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[171] *See* para. 55, *supra.*

[172] *Connecticut Decision* at 26.

[173] *See* para. 56, *supra.*

The principal basis of Connecticut's assertion is the lack of separation between the wholesale operations of BAMM or Springwich and their respective retail affiliates.[174] However, no DPUC regulation (or Federal rule) requires carriers to separate their wholesale and retail operations. Thus, carriers could operate on a fully integrated basis, with all the internal coordination such operations imply. Although the DPUC has identified two instances in which a wholesale carrier appears to have favored its retail affiliate over non-affiliated resellers, such evidence does not establish a pattern of anticompetitive activity and does not support a request to continue rate regulation. For these reasons, and for the reasons expressed in para. 59, *supra,* the record does not provide a basis for according significant weight to the state's presentation on this issue.

d. Equal Access and Billing

74. Connecticut asserts that Springwich's requirement that long distance calls be carried by its long distance affiliate is anti-competitive and "contradicts" the policy of the Connecticut General Assembly of promoting telecommunications competition.[175] The DPUC also asserts that wholesale carriers' billing practices warrant a continuation of rate regulation authority. However, the DPUC examined such issues last year and did not, to our knowledge, take remedial action. Again, we note that the practices the DPUC complains of do not violate any extant state or Federal regulation.[176] On this record, we are not persuaded the DPUC has made a case for continued rate regulation.

3. Rate of Return; Price Levels; Market Share

75. The DPUC's contentions concerning evidence of rates of return, market share and price levels are similarly unpersuasive. First, although in its Petition the DPUC asserts that wholesale carriers' returns exceed "competitive" earnings levels, in the DPUC's own investigation it concluded that the record is "inconclusive" regarding the reasonableness of those carriers' returns and financial performance.[177] This discrepancy is not explained by the DPUC. Moreover, the record in this proceeding shows that those carriers continue to invest heavily in building out their networks, and the DPUC has not presented evidence that carriers are restricting output in order to raise prices. Thus, the DPUC's evidence falls short of the showing necessary to convince us that wholesale carriers' financial performance provides a basis for continued rate regulation.

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[174] *See* para. 57, *supra.*

[175] *See* para. 59, *supra.*

[176] We are examining the issue of CMRS equal access in a pending rulemaking. *See* In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking, 9 FCC Rcd 5408 (1994).

[177] *Connecticut Decision* at 30 (Finding of fact No. 7).

76. Second, the evidence shows that wholesale prices in Connecticut are declining, especially since 1993. We also note that cellular subscribers have increased significantly, and that the DPUC has not adduced any evidence that subscribers are dissatisfied with the service they are receiving. This evidence of price decreases, coupled with the absence of any showing of consumer complaints concerning price levels, leads us to conclude that the DPUC has not demonstrated that cellular rate levels are unjust or unreasonable.

77. The record demonstrates that carriers' market shares have shifted significantly. In the nine years since the advent of the non-wireline operator's service, the first entrant's share has declined from 100 to 46 percent. Although the market shares of individual independent resellers apparently have declined or not grown significantly, the record does not establish a causal link between those data and anticompetitive actions by wholesale carriers. On this record, it is as likely that these market share data could be attributed to individual carrier's efficiencies and marketing practices. The evidence does not demonstrate that market conditions fail to protect subscribers adequately against unjust and unreasonable rates, or unjustly and unreasonably discriminatory rates. For this reason, and the reasons discussed previously, we deny the DPUC's petition.

VI. REGULATION OF OTHER TERMS AND CONDITIONS

78. Prior to OBRA, Section 332 prohibited the states from imposing "rate ... regulation" upon certain wireless telecommunications carriers.[178] This prohibition was construed broadly to preclude almost all state regulatory activity.[179] As revised by OBRA,

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[178] The statute provided in relevant part that "[n]o state or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service . . . ." 47 U.S.C. § 332(c)(3) (prior to revisions enacted by OBRA).

[179] *See, e.g.*, Telocator Network of America v. FCC (Millicom), 761 F.2d 763 (D.C. Cir. 1985) (upholding Commission's interpretation of Section 332(c)(1), 47 U.S.C. § 332(c)(1), in determining whether preemption provisions of that section apply to a given communications system). *See also, e.g.*, American Teltronix (Station WNHM552), 3 FCC Rcd 5347 (1988)("Congress did not intend that a private land mobile licensee who, either intentionally or inadvertently, provides service to ineligible users would thereby subject itself to state regulatory authority, including possible sanctions, for operating as a common carrier."), *recon. denied*, 5 FCC Rcd 1955, 1956 (1990)(note omitted) ("state entry and rate regulation of a communications service offered by a private land mobile radio system is preempted by statute .... [A]ccompanying legislative history reveals that Congress recognized the Commission's broad discretion to dictate which land mobile systems are to be regulated as private."). The Commission again stated its view of preemptive authority under that provision when it adopted a Notice of Inquiry respecting Personal Communications Services. Amendment of the Commission's Rules To Establish New Personal Communications Services, Notice of Inquiry, 5 FCC Rcd 3995, 3998 (para. 24 n.19) (1990).

Section 332(c)(3) now prohibits states from regulating "the rates charged" for CMRS, but it expressly reserves to them the authority to regulate the "other terms and conditions of commercial mobile services." Although there is no definition of the term "the rates charged" in the statute or its legislative history, there is legislative history regarding the "other terms and conditions" language. We believe it is sufficient to allow us to comment in a preliminary manner on what regulatory activities the DPUC is entitled to continue, despite our denial of its Petition.

79. The House of Representatives Committee on Energy and Commerce, reporting on the House bill that was incorporated into the amended Section 332, noted that even where state rate regulation is preempted, states nonetheless may regulate other terms and conditions of commercial mobile radio services. The Committee stated:[180]

> By "terms and conditions," the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (*e.g.*, zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

80. Establishing with particularity a demarcation between preempted rate regulation and retained state authority over terms and conditions requires a more fully developed record than is presented by the DPUC Petition and related comments. Thus, we will not expound at any length on this matter. The legislative history largely speaks for itself. It is possible to extrapolate certain findings from the legislative history, however, and we do so here in the interest of minimizing future proceedings directed at this issue.

81. First, although the DPUC may not prescribe, set, or fix rates in the future because it has lost authority to regulate "the rates charged" for CMRS, it does not follow that its complaint authority under state law is entirely circumscribed. Complaint proceedings

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> If these services are considered to be, or classified as, radio common carrier telephone exchange services, then the states, under Section 2(b) of the Act, may impose entry and rate regulations upon intrastate operations. If we classify these services as private land mobile, such state regulation would be expressly preempted under Section 332(c)(3).

[180] H.R. Rep. No. 103-111, 103d Cong., 1st Sess. at 261.

may concern carrier practices, separate and apart from their rates.[181] In consequence, it is conceivable that matters might arise under state complaint procedures that relate to "customer billing information and practices and billing disputes and other consumer matters." We view the statutory "other terms and conditions" language as sufficiently flexible to permit Connecticut to continue to conduct proceedings on complaints concerning such matters, to the extent that state law provides for such proceedings.

82. Second, under the same logic, we also conclude generally that several other aspects of a state's existing regulatory system may fall outside the statutory prohibition on rate regulation. For example, a requirement that licensees identify themselves to the public utility commission, or whatever other agency the state decides to designate, does not strike us as rate regulation, so long as nothing more than standard informational filings is involved. Moreover, nothing in OBRA indicates that Congress intended to circumscribe a state's traditional authority to monitor commercial activities within its borders. Put another way, we believe Connecticut retains whatever authority it possesses under state law to monitor the structure, conduct, and performance of CMRS providers in that state. We expect that, to the extent any interested party seeks reconsideration on this issue, it will specify with particularity the provisions of the Connecticut regulatory practice at issue.

VII. ORDERING CLAUSES

83. Accordingly, pursuant to Section 332 (c)(3) of the Communications Act, 47 U.S.C. § 332 (c) (3), IT IS ORDERED that the Petition To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers, filed by the Connecticut Department of Public Utility Control, IS DENIED for the reasons set forth above.

84. IT IS FURTHER ORDERED that the applications for review filed by Connecticut Telephone and Communications Systems, Inc. and Connecticut Mobilecom, Inc. (Resellers) and by Bell Atlantic Metro Mobile Companies (BAMM) ARE DENIED.

85. IT IS FURTHER ORDERED that the requests for confidential treatment of return data submitted by Springwich and Bell Atlantic ARE DISMISSED AS MOOT in light of the Bureau's determinations in the *Second Confidentiality Order* and the *Reconsideration of Second Confidentiality Order*.

86. IT IS FURTHER ORDERED, pursuant to Sections 1.4(b), 1.4(b)(2), and 1.106(f) of the Commission's Rules, that any petition for reconsideration of this order

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[181] *E.g.*, Section 208(a) of the Communications Act authorizes complaints by any person "complaining of *anything done or omitted to be done* by any common carrier subject to this Act, in contravention of the provisions thereof." 47 U.S.C. § 208(a) (emphasis added).

SHALL BE FILED within thirty days of the day after the day on which public notice of this action is given.[182]

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[182] Although we assigned the DPUC Petition a docket number for administrative convenience, this is an adjudicatory-type proceeding, not a rulemaking.

APPENDIX A

PR Docket No. 94-106 (Connecticut)

List of Parties Filing Comments

American Mobile Telecommunications Association, Inc. (AMTA)

Attorney General of the State of Connecticut (AG)

Bell Atlantic Metro Mobile Companies (BAMM)

Cellular Telecommunications Industry Association (CTIA)

Connecticut Office of Consumer Counsel (OCC)

Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc. (CTCS and CM, "The Resellers")

E.F. Johnson Company (E.F. Johnson)

GTE Service Corp. on behalf of GTE Mobilnet, Inc. and Contel Cellular, Inc. (GTE)

McCaw Cellular Communications, Inc. (McCaw)

Mobile Telecommunication Technologies Corp. (MTel)

National Cellular Resellers Association (NCRA)

Nextel Communications, Inc. (Nextel)

Paging Network, Inc. (PageNet)

Personal Communications Industry Association (PCIA)

Springwich Cellular Limited Partnership (Springwich)

List of Parties Filing Reply Comments

PageMart, Inc. (Pagemart)

Rural Cellular Association (RCA)

Bell Atlantic Metro Mobile Companies (BAMM)

Cellular Telecommunications Industry Association (CTIA)

Connecticut Attorney General (AG)

Connecticut Department of Public Utility Control (DPUC)

Connecticut Office of Consumer Counsel (OCC)

Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc. (CTCS and CM, ''Resellers'')

GTE Service Corporation (GTE)

McCaw Cellular Communications, Inc. (McCaw)

Mobile Telecommunication Technologies Corp. (MTel)

Nextel Communications, Inc. (Nextel)

Springwich Cellular Limited Partnership (Springwich)

List of Parties Filing Supplemental Comments Related to Confidentiality

Bell Atlantic Metro Mobile Companies (BAMM)

Connecticut Attorney General (AG)

Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc. (CTCS and CM, ''The Resellers'')

Springwich Cellular Limited Partnership (Springwich)

APPENDIX B

SCI/Springwich Partnership Wholesale Prices

	1/1/87	1/1/90	1/1/93	1/1/94	6/27/94	Change
60 Minutes	$42.08	$42.08	$39.08	$34.08	$34.08	19.0%
120 Minutes	$59.09	$59.09	$53.09	$48.09	$48.09	18.6%
480 Minutes	$161.15	$161.15	$137.15	$132.15	$132.15	18.0%

Assumptions: 7500 numbers, 1,000,000 peak minutes and 250,000 off-peak minutes. (Those number are in the middle of the various available tiers.)
80% of minutes are peak.
1/1/87 and 1/1/90 60 minute prices exclude effect of 100 minute minimum per month per cellular number.
1/1/94 prices include a promotion lowering the monthly access charge by $2. That promotion was permanent by 6/27/94.
6/27/94 prices exclude effect of $0.05 promotion for weekend off-peak minutes. (Lowering all off-peak minute charges by $0.05 would reduce 60, 120, and 480 minute prices by $0.60, $1.20 and $4.80, respectively.)
Price reductions prior to 1/1/93 were due to reduced per minute charges; after 1/1/93 reductions were primarily due to reductions in monthly access charges.
Springwich also states that the monthly access charge fell by an average of 35% per tier. The effect of that change would be about $7 per user.

Sources: Connecticut Petition, Appendix 3, Springwich Cellular Limited Partnership Tariffs For Services Furnished in the State of Connecticut, Effective Rates Pages 1 and 2, Effective June, 27, 1994; and Comments of Springwich Cellular Limited Partnership, Sept. 19, 1994, at Exh. 7.